

<b>DIVISION OF MINED LAND RECLAMATION</b>		<b>PROCEDURE NO.</b>	3.3.04
<b>PROCEDURES MANUAL</b>		<b>ISSUE DATE</b>	October 1, 1998
<b>SUBJECT</b>	Water Rights and Replacement	<b>Section</b>	Enforcement
		<b>Last Revised</b>	3/17/97

### **OBJECTIVE AND INTENT :**

To ensure the Field Inspector properly and timely responds and handles (within the Division's jurisdiction) situations where a water supply of a property owner is alleged to have been adversely affected by contamination, diminution, or interruption proximately resulting from a coal surface mining operation.

### **GENERAL :**

**45.1-258(A) of the Act and 4 VAC 25-130-816.41(h) of the regulations** - provide that any person who conducts coal surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities.

In 1993, the Act was amended (45.1-258.B) to include any drinking, domestic, or residential water supply adversely affected by underground coal mining operations conducted on or after October 24, 1992. Amendments to the regulations, effective December 24, 1997, gave rise to **4 VAC 25-130-817.41(j)** and the definition of "Replacement of water supply" under **4 VAC 25-130-700.5**.

The Division will utilize the baseline hydrologic information required by 4 VAC 25-130-780.21, 4 VAC 25-130-780.22, 4 VAC 25-130-784.14, and 4 VAC 25-130-784.22 of the regulations and any other relevant information obtained during its investigation to determine the extent of impact a coal mining operation may have had upon the ground and surface waters.

The Division will determine whether the current water quality and quantity is equal to or better than the original water supply.

### **Contamination, Diminution, or Interruption:**

The Inspector will coordinate the water loss or degradation complaint investigation with the Technical Section (per Procedure #3.1.06) when he or she suspects that the water supply may have been adversely affected by the mining operation.

During the initial complaint investigation, the Inspector should inform the company of the remedial actions and abatement time frames which may be considered should the Division's investigation ultimately determine that the mining operation adversely impacted the water supply.

Should the Division determine that the mining operation adversely affected a water supply covered under the Act and regulations, the Reclamation Program Manager would issue a **water replacement order**, sent by certified mail to the company with copy to the affected water supply user. The order would:

- require the company to permanently replace the impacted water supply by a set abatement date with a quality and quantity of water as good or better than the pre-mining supply.
- inform the company that the duration of the water replacement supply shall be the same as if no mining had occurred.
- require the company to take interim steps to temporarily replace the impacted water supply and demonstrate the initiation of actions to permanently replace the supply.

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The Division has generally set an abatement period of 21 days for permanent replacement and 5 working days for the interim steps. The abatement period would commence upon the company's receipt of the water replacement order. The order shall also inform the company of its right to seek administrative review.

The coal company may request additional time for permanent water replacement provided:

- temporary water replacement has been supplied to the citizen.
- the citizen has been advised of the company's request for an extension of time.
- the company has supplied the Division with documentation that it is negotiating in good faith with the citizen to come to a mutually agreeable resolution of the water situation.

After due consideration of this information, the inspector may extend the water replacement order in a follow-up complaint investigation report.

Should the company fail to comply with the water replacement order or seek timely administrative review, the Inspector shall issue appropriate enforcement action per Procedure #3.3.01.

#### Termination of a Water Replacement Order:

The Inspector will **terminate the water replacement order** when the company and citizen are able to reach an agreement on the replacement water supply or on compensation for the water supply.

However, **should the parties be unable to reach an agreement** on replacing the water supply, the agency must determine whether the water replacement order should be kept in place or terminated. The Inspector, with assistance from the technical section, will contact the:

- citizen to determine what the person believes is necessary for the supply to be replaced.
- company to determine what remedies the company is offering the citizen.

The Inspector and appropriate technical staff will continue to assist the citizen and company in their efforts to reach an agreement that is reasonable and in accordance with the regulations.

Should the parties be unable to reach an agreement, the Inspector will advise the company that it must construct an offer that complies with the "*Replacement of water supply*" definition at 4 VAC 25-130.700.5. The company's offer to replace the water supply or compensate the complainant:

- could guarantee payment or compliance over a period of time (i.e., twenty years, thirty years or another appropriate term).
- may be an annuity that pays monthly payments, as well as any one-time capital costs (such as, but not limited to well drilling, public water hookups, one-time pump replacement, etc.).
- should allow for inflation.
- should include documentation that the projected costs are verified by an independent party. (Examples - a local Public Service Authority could provide monthly water usage costs and hookup charges; an electric utility company could provide electric usage rates; and a contractor could provide cost estimates on well drilling and construction.)

Payment should be in the form of an annuity to be paid by a financial institution, or an insurance policy that has the appropriate payout provisions. (The Division may consider other payout options proposed by the company.)

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The Inspector and appropriate staff will review the offer to ensure it meets the requirements of the water replacement regulations. Once the offer meets the regulatory requirements (costs are verifiable and the offer has guaranteed payment provisions), the Inspector would notify the citizen (by follow-up complaint investigation report) that the offer would satisfy the water replacement order. The Inspector would then:

- terminate the water replacement order.
- provide the complainant with a copy of the termination action.
- inform the complainant of the right to request administrative review of the Division's decision under 4 VAC 25-130-842.15 of the regulations.